

Holland & Knight LLP  
400 South Hope Street, 8th Floor  
Los Angeles, CA 90071  
Tel: 213.896.2400  
Fax: 213.896.2450

HOLLAND & KNIGHT LLP  
Stacey H. Wang (CA Bar No. 245195)  
400 South Hope Street, 8th Floor  
Los Angeles, CA 90071  
Telephone: 213.896.2400  
Fax: 213.896.2450  
E-mail: stacey.wang@hklaw.com

Attorneys for Plaintiff,  
*Orient Overseas Container Line, Ltd.*

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

ORIENT OVERSEAS CONTAINER LINE, LTD.,	}	Case No.: 2:17-cv-02392
Plaintiff,		<b>COMPLAINT</b>
vs.		
BNSF RAILWAY COMPANY and BURLINGTON NORTHERN SANTA FE, LLC,		
Defendants.		

Plaintiff Orient Overseas Container Line, Ltd. (“OOCL”), by and through their attorneys Holland & Knight LLP, for their Complaint against defendants BNSF Railway Company (“BNSF Railway”) and Burlington Northern Santa Fe, LLC (“BNSF Corporate”) (collectively “BNSF”), alleges as follows:

**THE INCIDENT**

1. On or about June 28, 2016, two trains operated, controlled, leased, and/or owned by BNSF collided in Panhandle, Texas, resulting in the death of three crew members, a significant fire, loss of certain cargo, and damage or delay to other cargo and containers (the “Incident”).

2. At the time of the Incident, OOCL owned 191 containers onboard BNSF Eastbound Train S-LACLPCI-26K.

Holland & Knight LLP  
 400 South Hope Street, 8th Floor  
 Los Angeles, CA 90071  
 Tel: 213.896.2400  
 Fax: 213.896.2450

3. At the time of the Incident, 54 containers were onboard BNSF Eastbound Train S-LACLPCI-26K pursuant to intermodal bills of lading issued by OOCL for carriage of certain goods from ports in Asia to various Midwest cities in the United States.

4. As a result of the Incident, OOCL has received, or expects to receive, numerous claims from the shippers, consignees, cargo underwriters, or other parties with interests in the cargo and/or containers which were shipped pursuant to OOCL intermodal bills of lading and lost and/or damaged during the Incident.

5. OOCL brings this action against BNSF to recover for loss and/or damage to OOCL-owned containers involved in the Incident, and the amounts owed and owing to the shippers, consignees, cargo underwriters, or other parties with interests in the cargo and/or containers shipped pursuant to OOCL intermodal bills of lading and lost and/or damaged during the Incident.

### **PARTIES**

6. Plaintiff OOCL was and is a foreign corporation organized and existing under the laws of Hong Kong with an office located at 31/F, Harbour Centre 25 Harbour Road, Wanchai Hong Kong. OOCL is engaged in business as a common carrier of merchandise by water for hire.

7. Upon information and belief, defendant BNSF Railway was and is a foreign corporation organized and existing under the laws of the State of Delaware, with an office located at 2650 Lou Menk Drive, Fort Worth, TX 76131-2830, and is primarily engaged in the freight rail transportation business as a common carrier of goods by rail for hire, with an agent for service of process in this District.

8. Upon information and belief, defendant BNSF Corporate was and is a foreign corporation organized and existing under the laws of the State of Delaware, with an office located at 2650 Lou Menk Drive, Fort Worth, TX 76131-2830, and is primarily engaged in the freight rail transportation business as a common carrier of goods by rail for hire.

Holland & Knight LLP  
400 South Hope Street, 8th Floor  
Los Angeles, CA 90071  
Tel: 213.896.2400  
Fax: 213.896.2450

**JURISDICTION & VENUE**

9. This action arises out of the Court's federal question jurisdiction (28 U.S.C. § 1331 and 49 U.S.C. § 14706) and/or supplemental jurisdiction (28 U.S.C. § 1367) as hereinafter more fully appears.

10. Venue is proper here within the meaning of 28 U.S.C. § 1391 and 49 U.S.C. 11706(d)(2). Defendants BNSF reside within this District within the meaning of 28 U.S.C. § 1391(c). Defendants BNSF operate, control, lease, or own a railroad or a route within this District.

11. BNSF's Intermodal Rules and Policies Guide provide: "All loss or damages suits filed against BNSF shall be filed in a United States Federal District Court in the location of the shipment's origination or termination on BNSF."

12. As more fully set forth below, the subject shipments of this action originated on BNSF in this District.

**FACTS**

13. In or around June 2016, certain cargo and containers were discharged by the vessels OOCL HO CHI MINH, MOL CREATION, OOCL MEMPHIS, NORO, NYK AQUARIUS, and MSC SANDRA (the "Vessels") at the port of Long Beach, California, and there it was delivered into the hands of BNSF in good order and condition.

14. The cargo and containers were shipped pursuant to intermodal bills of lading issued by OOCL.

15. Pursuant to the bills of lading, OOCL undertook to transport (or arrange for transportation of) the cargo and containers by the Vessels from certain ports of loading in Asia to the discharge port of Long Beach, California, and then to certain places of delivery in the United States (namely Chicago, IL; Findlay, OH; De Kalb, IL; Franklin Park, IL; Crawfordsville, IN; and Sheboygan Falls, WI).

16. At Long Beach, California, the cargo and containers were delivered to BNSF in good order and condition.

Holland & Knight LLP  
400 South Hope Street, 8th Floor  
Los Angeles, CA 90071  
Tel: 213.896.2400  
Fax: 213.896.2450

1           17. BNSF accepted the cargo and containers and, in consideration of certain  
2 agreed freight charges thereupon paid or agreed to be paid, BNSF further agreed to  
3 transport and carry said cargo and containers via rail, and there deliver the cargo and  
4 containers in like good order and condition.

5           18. At Long Beach, California, the cargo and containers were entrained on  
6 BNSF Eastbound Train S-LACLPC1-26K.

7           19. All portions of the carriage were part of an international and interstate  
8 transportation of goods pursuant to through bills of lading issued by OOCL.

9           20. On or about June 28, 2016, BNSF Eastbound Train S-LACLPC1-26K  
10 collided with BNSF Westbound Train Q-CHISBD6-27L in Panhandle, Texas. *See*  
11 NTSB Preliminary Report, attached hereto as Exhibit 1.

12           21. According to the NTSB Preliminary Report, just before the Incident,  
13 BNSF Eastbound Train S-LACLPC1-26K, failed to reduce speed to 40 mph at a  
14 yellow approach signal and then failed to stop at a red stop signal. *See Ex. 1.*

15           22. As a result of the Incident, BNSF failed to make delivery of some of the  
16 cargo and containers and/or failed to make delivery of the cargo and containers in  
17 like good order and condition.

18           23. BNSF's failure to deliver the cargo and containers and/or failure to  
19 deliver the cargo and containers in like good order and condition are violations of the  
20 obligations and duties of common carriers of merchandise by rail for hire, including  
21 their failure to perform their services with respect to the cargo and containers in a  
22 careful, workmanlike manner; their failure and/or negligence to properly inspect,  
23 maintain, and repair their rail lines; and their failure and/or negligence to properly  
24 hire and train locomotive conductors and engineers.

25           24. OOCL, as the owner of certain containers aboard, has incurred damages  
26 in replacing and/or repairing the damaged and lost containers.

27           25. OOCL, as the bill of lading issuer for the cargo, has incurred, and will  
28 continue to incur, losses as a result of the damage and/or loss to the cargo.

Holland & Knight LLP  
 400 South Hope Street, 8th Floor  
 Los Angeles, CA 90071  
 Tel: 213.896.2400  
 Fax: 213.896.2450

26. OOCL brings this action on its own behalf and as an agent, trustee, assignee, or subrogee, on behalf of, and for, the interest of all parties interested in and who were damaged as a result of the Incident and the damage and/or loss to the physical containers and to the cargo, as their respective interests may ultimately appear, and OOCL is duly entitled to maintain this action.

27. OOCL has performed all conditions on its part to be performed.

28. By reason of the foregoing, OOCL has sustained damage to its own containers and has an outstanding claim against BNSF for damage to its own property in the amount of no less than \$311.00 as can be presently calculated, and OOCL has sustained or will sustain damages arising out of loss or damage to the cargo set forth in Annex A, as nearly as the same can now be estimated, in a sum at or exceeding \$1,587,468.80, plus interests and costs (the "Cargo"). *See* Annex A.<sup>1</sup>

### **FIRST CAUSE OF ACTION**

#### **BREACH OF CONTRACT**

29. OOCL incorporates paragraphs 1-28, as though the same have been set forth herein.

30. OOCL and BNSF entered into a transportation contract, pursuant to which BNSF Railway undertook to exercise reasonable care when in the possession of OOCL's containers and all cargo consigned by OOCL to BNSF.

31. The terms of the transportation contract are set forth in BNSF Railway's Intermodal Rules and Policies Guide, effective July 1, 2008, as updated. The current BNSF Intermodal Rules and Policies Guide can be found at:  
<https://www.bnsf.com/customers/pdf/intermodal-r-and-pg.pdf>.

32. Pursuant to the transportation contract, BNSF had a duty to exercise reasonable care when in the possession of OOCL's containers and to deliver them in the same good order and condition as when the same were received.

<sup>1</sup> On information and belief, BNSF has settled directly and/or reimbursed OOCL for damages incurred to certain cargo and containers. The Cargo set forth in Annex A and the damages of \$311 represent the outstanding claims for which BNSF has not settled or reimbursed OOCL.

Holland & Knight LLP  
400 South Hope Street, 8th Floor  
Los Angeles, CA 90071  
Tel: 213.896.2400  
Fax: 213.896.2450

1 33. BNSF took possession and control of certain OOCL containers and the  
2 Cargo in good order and condition at Long Beach and/or Los Angeles, California.

3 34. OOCL performed all conditions required under the transportation  
4 contract and the BNSF Intermodal Rules and Policies Guide.

5 35. BNSF breached the transportation contract by failing to deliver the  
6 OOCL containers and/or Cargo in the same good order and condition as when it was  
7 received.

8 36. By reason of the foregoing, OOCL has sustained damage to its own  
9 containers and has an outstanding claim against BNSF for damage to its own  
10 property in the amount of \$311.00, and OOCL has sustained or will sustain damages  
11 arising out of loss or damage to the Cargo, as nearly as the same can now be  
12 estimated, in a sum at or exceeding \$1,587,468.80, plus interests and costs. *See*  
13 Annex A.

14 **SECOND CAUSE OF ACTION**

15 **BREACH OF CONTRACT AND DUTIES UNDER**  
16 **CARMACK AMENDMENT AND STAGGERS RAIL ACT**

17 37. OOCL incorporates paragraphs 1 - 36, as though the same have been set  
18 forth herein.

19 38. BNSF was a rail carrier within the meaning of the Carmack  
20 Amendment, 49 U.S.C. § 11706, *et seq.*, and 49 U.S.C. § 14706, and the Staggers  
21 Rail Act of 1980.

22 39. BNSF breached its duty of a rail carrier under the Act and the contracts  
23 of carriage by failing to deliver the containers and Cargo in the same good order and  
24 condition as when the same were received.

25 40. By reason of the foregoing, OOCL has sustained damage to its own  
26 containers and has an outstanding claim against BNSF for damage to its own  
27 property in the amount of \$311.00, and OOCL has sustained or will sustain damages  
28 arising out of loss or damage to the Cargo, as nearly as the same can now be

1 estimated, in a sum at or exceeding \$1,587,468.80, plus interests and costs. *See*  
2 Annex A.

3 **THIRD CAUSE OF ACTION**

4 **NEGLIGENCE**

5 41. OOCL incorporates paragraphs 1 - 40, as though the same have been set  
6 forth herein.

7 42. BNSF, directly or through their employees, agents, or independent  
8 contractors, as a common carrier of merchandise for hire, had a duty to properly stow,  
9 handle, care, and transport OOCL's containers and the Cargo from Long Beach,  
10 California to the place of delivery.

11 43. BNSF failed to carry and deliver OOCL's containers and the Cargo such  
12 as was reasonably required and would be sufficient to prevent the loss or damage to  
13 the Cargo.

14 44. In causing or allowing the Incident to occur and the resultant damage to  
15 OOCL's containers and the Cargo, BNSF breached their duty of reasonable care.

16 45. By reason of the foregoing, OOCL has sustained damages to its own  
17 containers and has an outstanding claim against BNSF for damage to its own  
18 property in the amount of \$311.00, and OOCL has sustained or will sustain damages  
19 arising out of loss or damage to the Cargo, as nearly as the same can now be  
20 estimated, in a sum at or exceeding \$1,587,468.80, plus interests and costs. *See*  
21 Annex A.

22 **FOURTH CAUSE OF ACTION**

23 **BAILMENT**

24 46. OOCL incorporates paragraphs 1 - 45, as though the same have been set  
25 forth herein.

26 47. BNSF, at all relevant times acted as a carrier of goods for hire by rail  
27 and/or a bailee and/or otherwise had a duty of care for OOCL's containers and the  
28 Cargo while the same was in their custody.

Holland & Knight LLP  
400 South Hope Street, 8th Floor  
Los Angeles, CA 90071  
Tel: 213.896.2400  
Fax: 213.896.2450



Holland & Knight LLP  
400 South Hope Street, 8th Floor  
Los Angeles, CA 90071  
Tel: 213.896.2400  
Fax: 213.896.2450

1           48. The containers and the Cargo were personal property that was delivered  
2 into the possession, custody, and control of BNSF, whereby a bailment arose.

3           49. BNSF, through their contractors, agents, servants, or sub-bailees,  
4 warranted and had a legal duty to safely keep, care for, and deliver the containers and  
5 the Cargo in the same condition as when it was entrusted to them.

6           50. While the Cargo was in BNSF's possession, the containers and the  
7 Cargo were damaged and/or lost because of the Incident caused by BNSF's action or  
8 inaction.

9           51. BNSF breached its obligations as a carrier of goods for hire by rail  
10 and/or a bailee and failed to deliver the OOCL containers and the Cargo in as  
11 complete or as good condition as when the same was entrusted to them.

12           52. By reason of the foregoing, OOCL has sustained damage to its own  
13 containers and has an outstanding claim against BNSF for damage to its own  
14 property in the amount of \$311.00, and OOCL has sustained or will sustain damages  
15 arising out of loss or damage to the Cargo, as nearly as the same can now be  
16 estimated, in a sum at or exceeding \$1,587,468.80, plus interests and costs. *See*  
17 Annex A.

18                           **FIFTH CAUSE OF ACTION**  
19                           **CONTRIBUTION & INDEMNITY**

20           53. OOCL incorporates paragraphs 1 - 52, as though the same have been set  
21 forth herein.

22           54. OOCL performed all conditions on its part to be performed under the  
23 intermodal bills of lading.

24           55. Any damage to the Cargo set forth in Annex A flows directly from the  
25 acts and/or omissions of BNSF.

26           56. OOCL has and/or will deny liability with respect to any and all damage  
27 to the Cargo set forth in Annex A. However, if it is adjudged that OOCL is liable to  
28 the shippers, consignees, cargo underwriters, or other parties with interests in the



1 Cargo, OOCL shall be entitled to recover from BNSF, in contribution or indemnity,  
 2 all losses, damages or expenses, including attorneys' fees to the extent recoverable by  
 3 statute or common law, as a result of the claims made by Cargo interests against  
 4 OOCL.

### 5 **ALTERNATIVE SIXTH CAUSE OF ACTION**

#### 6 **BREACH OF CONTRACT AND OF DUTIES UNDER COGSA**

7 57. OOCL incorporates paragraphs 1 - 56, as though the same have been set  
 8 forth herein.

9 58. BNSF was a common carrier of merchandise within the meaning of the  
 10 Carriage of Goods by Sea Act, 46 U.S.C. § 30701 *note*, formerly 46 U.S.C. § 1300, *et*  
 11 *seq.* ("COGSA"), for the carriage of goods by sea. As a common carrier of  
 12 merchandise, BNSF had a duty to exercise reasonable care while the containers and  
 13 Cargo were in its possession and control.

14 59. BNSF breached its duties as a carrier under that Act when the goods  
 15 were destroyed and or damaged as a result of the collision.

16 60. By reason of the foregoing, OOCL has sustained or will sustain  
 17 damages, as nearly as the same can now be estimated, in a sum up to or exceeding  
 18 \$1,587,468.80, plus interests and costs.

19  
 20 **WHEREFORE**, Plaintiff Orient Overseas Container Line, Ltd. prays:

21 1. That judgment may be entered in favor of OOCL against Defendants  
 22 BNSF Railway Company and Burlington Northern Santa Fe, LLC in a sum no less  
 23 than \$1,587,779.80 (\$311 + \$1,587,468.80), together with interest and costs, and the  
 24 disbursements of this action;

25 2. For attorneys' fees as permitted by statute and common law; and

26 3. That this Court grant to Plaintiff such other and further relief as may be  
 27 just and proper.

Holland & Knight LLP  
400 South Hope Street, 8th Floor  
Los Angeles, CA 90071  
Tel: 213.896.2400  
Fax: 213.896.2450

1 DATED: MARCH 28, 2017

HOLLAND & KNIGHT LLP

2 /s/ Stacey H. Wang  
3 Stacey H. Wang

4 Attorneys for Plaintiff,  
5 *Orient Overseas Container Line, Ltd.*

6 Of Counsel:

7 Holland & Knight New York

8 Christopher R. Nolan (*pro hac vice* application  
9 anticipated)

10 K. Blythe Daly (*pro hac vice application*  
11 anticipated)

**ANNEX A**

Con- tainer No.	Bill of Lading No.	Estimated Damages	Cargo Disposition	Load Port	Vessel	Dis- charge Port	Intended Place of Delivery
OOLU 7287097	OOCL 257408 3750	\$164,950.64	Loss	Kaohsiung	OOCL HO CHI MINH CITY	Long Beach	Chicago, IL
OOLU 7318367	OOCL 202257 9250	\$ 71,639.36	Loss	Laem Chabang	MOL CREATION	Los Angeles	Chicago, IL
OOLU 2173928	OOCL 202271 4010	\$515,371.61	Loss	Yantian	OOCL HO CHI MINH CITY	Long Beach	Chicago, IL
OOLU 9628398	OOCL 402335 5870	\$150,939.89	Loss	Tokyo	NORO	Los Angeles	Findlay, OH
OOLU 0249916	OOCL 257379 8330	\$ 60,251.57	Loss	Kaohsiung	OOCL MEMPHIS	Long Beach	Chicago, IL
OOLU 8343805	OOCL 257349 4050	\$ 65,000.00	Loss	Kaohsiung	OOCL HO CHI MINH CITY	Long Beach	De Kalb, IL
OOLU 8547394	OOCL 257349 4051	\$ 65,000.00	Loss	Kaohsiung	OOCL HO CHI MINH CITY	Long Beach	De Kalb, IL
TCLU 8589045	OOCL 257349 4051	\$ 65,000.00	Loss	Kaohsiung	OOCL HO CHI MINH CITY	Long Beach	De Kalb, IL
OOLU 7815321	OOCL 257407 3120	\$ 42,820.58	Damage	Kaohsiung	OOCL HO CHI MINH CITY	Long Beach	Chicago, IL
OOLU 018901	OOCL 257273 1690	\$114,311.34	Damage	Cai Mep	MOL CREATION	Long Beach	Chicago, IL
OOLU 4373360	OOCL 257410 0350	\$189,867.95	Damage	Kaohsiung	OOCL HO CHI MINH CITY	Long Beach	Chicago, IL
OOLU 0548265	OOCL 257310 2440	\$ 22,000.00	Damage	Kaohsiung	OOCL HO CHI MINH CITY	Long Beach	Franklin Park, IL
OOLU 1527077	OOCL 202271 3420	unknown	Damage	Hong Kong	OOCL HO CHI MINH CITY	Long Beach	Chicago, IL
OOLU 7719863	OOCL 403849 2166	unknown	Damage	Hong Kong	OOCL HO CHI MINH CITY	Long Beach	Crawfordsv ille, IN
OOLU 188730	OOCL 257304 8770	\$ 38,316.10	Damage	Laem Chabang	MOL CREATION	Los Angeles	Sheboygan Falls, WI
OOLU 040255	OOCL 257387 3460	\$ 22,000.00	Damage	Hong Kong	OOCL HO CHI MINH CITY	Long Beach	Franklin Park, IL

Total Estimated Cargo Damage: \$1,587,468.80.